IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.488 OF 2007

Zahir Zenuddin Merchant ...Appellant
vs.
Municipal Corporation of
Greater Mumbai ...Respondent

Mr.Yadunath Chaudhari for the Appellant
Ms Geeta Joglekar for B.M.C.

CORAM: A.S.OKA,J.
DATE : JUNE 19, 2007.

P.C.:

1. By consent of the Advocates for the parties, taken up for hearing forthwith. The Appellant is the original Plaintiff who has filed a suit for declaration that notice under section 351 of the Mumbai Municipal Corporation Act,1888 and the order passed by the Assistant Commissioner of the Respondent Corporation on the basis of the said notice are illegal and bad in law. A Notice of Motion was taken out for injunction preventing the Respondent-Corporation from demolishing the suit structure.

2. The allegation in the notice under challenge is that the Appellant has carried out unauthorised construction of mezzanine floor and that he has carried out construction of wooden cabin and toilet block along with pantry on the ground floor and he has changed the user of the premises.

3. By the order impugned dated 8th June 2007, the learned Trial Judge considered the prayer made by the Appellant for grant of an ad-interim relief. The learned Trial Judge

protected the structure of the mezzanine floor. However, he declined to grant protection in respect of the other part of the offending structure.

4. After having heard the Advocates for the parties, I am of the view that considering the documents placed on record, the learned Trial Judge has committed an error by not granting the ad-interim relief in respect of the remaining part of the structure which is subject matter of the notice under section under section 351 of the said Act of 1888. The learned Trial Judge will decide the Notice of Motion expeditiously.

5. Hence, I pass the following order :

i) The Impugned order dated 8th June 2007 is modified. Ad-interim relief granted by the Trial Court will also apply to the remaining part of the suit structure described in the notice dated 14th March 2007.

ii) Hearing of the Notice of Motion No.1945 of 2007 is expedited.

iii) The Trial Court will decide the Notice of Motion without being influenced by grant of ad-interim relief by this court.

iv) Appeal is partly allowed in above terms with no order as to costs.

JUDGE